

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

)

Docket No. ER08-190-000

**MOTION FOR LEAVE TO INTERVENE AND PROTEST OUT OF TIME
OF
THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission (“MPUC”), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, and Lisa S. Gast, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files this Motion for Leave to Intervene and Protest Out of Time in the above-captioned proceeding regarding the November 6, 2007 filing (“November 6 Filing”) and November 14, 2007 Errata (“November 14 Filing”) by ISO New England Inc. (“ISO-NE”) of an informational filing for qualification in the Forward Capacity Market. In support thereof, the MPUC states as follows:

I. PRELIMINARY STATEMENT

This Motion for Leave to Intervene and Protest Out of Time is filed pursuant to Rules 212, 213 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212, 385.213 and 385.214 (2007).

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the

Commission's official service list are designated as follows pursuant to Rule 203, 18

C.F.R. § 385.203 (2007):

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II. MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 101 *et seq.* It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1.101(k) (2007). Accordingly, the MPUC is generally permitted to give notice of its intervention pursuant to Rule 214(a)(2), 18 C.F.R. § 385.214(a)(2) (2007) and respectfully request that the Commission recognize the MPUC as an intervenor in this proceeding, with all rights attendant thereto.

In this instance, however, the MPUC did not provide notice of its intention to intervene within the time limitations provided by the Commission’s November 9, 2007 and November 21, 2007 Combined Notices of Filing, and, therefore, the MPUC is requesting leave to intervene out-of-time in the instant proceeding.

The MPUC respectfully submits that good cause exists to grant this request to intervene out of time so that the interests of the MPUC may be represented in this proceeding. This intervention is being submitted out of time because the MPUC became aware that its interests are implicated by the filing after the date set for parties to intervene. Although the MPUC only recently became aware of this proceeding, the filing directly impacts Maine consumers because ISO-NE's disqualification of a renewable resource sited in Maine, which is expected to be in operation by July 2008, is inconsistent with Maine's policy to promote renewable generation and reduce greenhouse gases. Further, the disqualification may discourage other renewable generators that may be seeking to locate in Maine. Thus, the MPUC has direct and vital interests in the matters addressed in this proceeding that will not be adequately represented by any other party. Finally, no party will be prejudiced by the MPUC's participation because no substantive orders have issued in this case. Accordingly, the MPUC's participation in this proceeding is necessary and appropriate to the administration of the FPA, and it will be in the public interest.

III. BACKGROUND

On November 6, 2007, ISO-NE made a filing in which it provided information about its qualification or disqualification of generators which sought to participate in the first Forward Capacity Auction ("FCA") under the Forward Capacity Market ("FCM") Settlement.¹ The commitment period under the first FCA begins on June 1, 2010. Among other things, the filing listed the projects that were not qualified to participate in the first FCA. Among the fourteen new projects which were disqualified to participate in

¹ ISO-NE filed an errata to the filing on November 14, 2007.

the first FCA was the application of the Stetson Wind Farm sponsored by UPC Wind Management, LLC.

The Stetson Wind Farm is proposed to be located on 4,800 acres of ridgeline on Stetson Mountain in Springfield, Maine. It will have 40 G.E. 1.5 MW Wind Turbines. The nameplate output for the project is 57 MW and the requested summer Qualified Capacity for the project is 9 MW; the proposed winter Qualified Capacity for the project is 26 MW. On November 8, 2007, the Maine Land Use Regulatory Commission (“LURC”) approved the siting of the Stetson Wind Farm. LURC found, among other things, that:

In respect to the need for the SWP on a state level, Maine laws and policies recently enacted in regard to increasing the amount of power generated by renewable sources such as wind, and the support for wind power development by the MPUC and by legislature provide evidence that there is a general need and support for wind power development in the state . . .²

The interconnecting transmission line permit application has been filed with the Maine Department of Environmental Protection. ISO-NE projected that the interconnecting transmission line is expected to be in service before the first Capacity Commitment period in June 1, 2010. The Stetson Wind Farm is expected to be operational by July 2008.

The Stetson Wind Farm’s generation interconnection application was approved by ISO-NE on July 27, 2007. The July 27 approval, made pursuant to section I.39 of the ISO-NE Open Access Transmission Tariff (“OATT”), included:

² LURC Decision in the Matter of Evergreen Wind Power V, LLC, Zoning Petition ZP 713, dated November 8, 2007, at 38, which can be found at: <http://www.maine.gov/doc/lurc/projects/Evergreen/zp713.pdf>.

[i]nstallation of a 115 kV transmission line that shall connect the new Stetson Substation with the Keene Substation and shall consist of 40 miles of 477 kcmil ASCR overhead conductor terminating at a new 115 kV circuit breaker at the existing Keene Road 115 kV Substation. (UPC-07-T01).³

However, even though the plant will be operational and will be providing renewable energy, ISO-NE declined to qualify the project, finding that it failed the overlapping interconnection test set forth in a planning procedure (Planning Procedure 10). Specifically, ISO-NE found:

The Stetson Wind Farm project requested to be qualified with a summer Qualified Capacity of 9 MW in the Maine Load Zone. The overlapping impact analysis determined that one interface internal to the Maine Load Zone would be overloaded after the addition of the Stetson Wind Farm project. The ISO has determined that the upgrades associated with the transmission project cannot be reasonably expected to be completed by the start of the Capacity Commitment Period beginning June 1, 2010,

November 6 Filing, Transmittal Letter at 25-26. Specifically, ISO-NE determined that the Orrington South Interface would be overloaded after the addition of the Stetson Wind Farm Project.

Market Rule 1 addresses qualification of new generation. Market Rule 1 specifies, in relevant part:

(f) Where, as a result of the initial interconnection analysis, the ISO determines that because of overlapping interconnection impacts, New Generating Capacity Resources that are otherwise accepted for participation in the Forward Capacity Auction in accordance with the other provisions and requirements of this Section III.13.1 cannot provide the full amount of capacity that they each would otherwise be able to provide (in the absence of the other proposed resources), those New Generating Capacity Resources will be accepted for participation in the Forward Capacity Auction on the basis of their Queue Position, as

³ ISO-NE I 39 approval letter, dated July 27, 2007, which can be found at http://www.iso-ne.com/trans/pp_tca/isone_app_approvals/prop_plan/2007/jul/upc-07g01andt01_bhe-07-t01_chasse-fenn-jacobs.pdf.

described in Schedules 22 and 23 of Section II of the Transmission, Markets and Services Tariff, with priority given to resources that entered the queue earlier. Resources with lower priority in the Queue may be accepted partially. If two or more New Generating Capacity Resources are not in the Queue, priority shall be given to the New Generating Capacity Resource with the earlier submission date of its New Capacity Show of Interest Form. The ISO will work with its stakeholders to investigate alternative approaches to integrating the generation interconnection queue and the Forward Capacity Market so as to improve the efficiency of the Forward Capacity Market. The ISO will make a compliance filing on September 1, 2007 which will include a progress report on this issue and a description of its priorities on the future work needed to implement the Forward Capacity Market.⁴

Planning Procedure 10, which is not a filed rate, was developed to implement the FCM qualification provisions of Market Rule 1. Under Planning Procedure 10, ISO-NE will qualify the proposed New Generating Capacity at which that unit can operate “without re-dispatch of other capacity resources.” Planning Procedure 10 §.5.7.

IV. PROTEST

A. The Filed Rate Does Not Require the Disqualification of the Stetson Wind Farm.

Although ISO-NE contends that its disqualification of the Stetson Wind Farm is consistent with the filed rate, an examination of Market Rule 1 demonstrates that the concept of overlapping interconnection impacts relates to overlaps between new generating capacity resources. Market Rule 1 provides that if a generator is otherwise qualified, but “because of overlapping interconnection impacts,” the new generation resources that “are otherwise accepted for participation in the Forward Capacity Auction” in accordance with Market Rule 1:

...cannot provide the full amount of capacity that they each would otherwise be able to provide in the absence of the other proposed resources), those New Generating Capacity Resources will be accepted for

⁴ ISO-NE Tariff, Market Rule 1, at III.13.1.1.2.3(c), which can be found at http://www.iso-ne.com/regulatory/tariff/sect_3/index.html.

participation in the Forward Capacity Auction on the basis of their Queue Position, as described in Schedules 22 and 23 of Section II of the Transmission, Markets and Services Tariff, with priority given to resources that entered the queue earlier.⁵

Market Rule 1 neither directs nor authorizes ISO-NE to *reject* the qualification of a new generator because combined with *existing* generators, it will overload an interface. While Planning Procedure 10 appears to authorize the action taken by ISO-NE, this planning procedure is not the filed rate.

B. To the Extent Current Procedures, Rules or Zonal Boundaries Require ISO-NE to Disqualify Operational New Renewable Generation from FCM Participation, these Procedures, Rules or Zonal Boundaries Should Be Reexamined.

Even if ISO-NE's actions are authorized by Market Rule 1 (and they are not), the effect of ISO-NE's determination should be examined in the context of New England policymakers' focus on developing renewable resources. In the recent Interconnection Queuing Practices Technical Conference in AD08-2-000, Chairman Kelliher stated:

Unprecedented demand in some regions for renewable generation presents different challenges. The planning horizon for wind generation facilities may be shorter than other generation facilities. Wind facilities can generally be brought online more quickly, so any delay in the interconnection process is significant. There also is the reality that many states have adopted aggressive renewable portfolio standards, which drives much of the demand for new renewable energy facilities.⁶

As noted in the draft report relating to alternatives to participation in the New England RTO "[i]n the aggregate, the RPSs will require from 13-to-14 million MWh of renewable energy per year by 2015, roughly equivalent to 1,800 MW of biomass or

⁵ *Id.*

⁶ Docket No. AD08-2-000, "Opening remarks on Interconnection Queuing Practices Technical Conference," December 11, 2007.

4,400 MW of wind capacity.”⁷ The disqualification of a renewable resource generator such as the Stetson Wind Farm is thus inconsistent with New England’s stated policy goals of encouraging renewable resource development. In fact, only a few new renewable resources were qualified in ISO-NE’s FCM.

While the purpose of the overlapping impact analyses are to ensure that the new capacity provides “incremental benefits” to the zone in which the capacity is offered, the process requires refinement to avoid discouraging renewable resources from locating in Northern New England. In this case, a transmission constraint at Orrington, Maine, prevents the capacity from the Stetson Wind Farm from being delivered in all hours to the part of the Maine Zone south of Orrington, without a redispatch of an existing unit. Although this capacity can be delivered north of Orrington, this unit will not be approved to participate in the first FCM because of the Orrington South transmission constraint.

ISO-NE notes in its letter to Stetson Wind Farm that a transmission upgrade that would relieve the Orrington constraint would address the “overlapping interconnection” problem. ISO-NE notes, however, that any transmission upgrades that may relieve the constraint are not expected to be in service before the first FCA. Further, it is possible that the same issue will prevent the qualification of this renewable resource for the second FCA. While in the long term, it is possible that this transmission constraint will be eliminated, there needs to be a shorter-term solution to allow this renewable resource

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Maine Public Utilities Commission, Draft Final Report, Pursuant to “A Resolve to Direct the Public Utilities Commission to Examine Continued Participation by Transmission and Distribution Utilities in this State in the New England Regional Transmission Organization” presented to the Utilities and Energy Committee on January 16, 2007, dated December 4, 2007 at 18 which can be found at: http://www.maine.gov/mpuc/staying_informed/ISO-NEReportWORKINGDRAFT12-04-07FH.doc.

to participate in the FCM. One possible approach that is under consideration in Maine is whether Maine should have two energy and capacity zones, one for Orrington South, and one for Orrington North. A separate capacity zone for Orrington North would allow this new renewable resource to at least participate in the second FCA. After further study and consultation with ISO-NE, MPUC will determine whether to request that this option be further explored or implemented.

Further, the queue working group should address whether this intrazonal deliverability requirement is appropriate and consistent with the minimum interconnection standard. One question that needs to be addressed is whether this planning procedure gives preference to existing generation over new generation and thus creates a barrier to entry into the FCM market. While the intent of the rule, to ensure that new capacity actually provides value, is laudable, this should be a market function rather than occurring by administrative fiat. Here, there is reason to believe that the Stetson Wind Farm will be providing value to Maine and the rest of New England in meeting Regional System Plan requirements and reducing greenhouse gases. The market should determine the value of the capacity it provides.

In addition, ISO-NE, in its filings in the FCM docket, claimed that the Orrington-South constraints were not meaningful, in part, because its own reliability report identifying these constraints “examined the frequency of occurrence of export constraints of any duration, however brief . . .” which was not, according to ISO-NE, a well founded way of determining the ability of capacity to be transferred south of Orrington.⁸ Thus, it

⁸ Motion for Leave to Answer, Answer and Request for Expedited Consideration of ISO New England Inc., Devon Power, LLC, et al., Docket Nos. ER03-563-000, -055, -060, filed August 1, 2006.

is not clear whether the analysis performed by ISO-NE regarding the deliverability of capacity south of Orrington is consistent with ISO-NE's view expressed in Docket No. ER03-563 about how constraints are determined to be "meaningful. Thus, it is unclear that ISO-NE's analysis under Planning Procedure 10 is consistent with the information it provided the Commission in Docket No. ER03-563.

Finally, ISO-NE claimed, in Docket No. ER08-41, that the export constraint will not bind, *given the capacity that has been qualified in the auction*. However, ISO-NE did not qualify the Stetson Wind Farm *because* of a binding transmission constraint. The fact that the Orrington South constraint is north of the Maine-New Hampshire interface is not controlling. Either capacity can flow to the rest of New England, in which case the Stetson Wind Farm should be qualified, or it cannot, in which case the projections made by ISO-NE in Docket No. ER08-41 are incorrect. These inconsistencies should be reconciled in both Dockets.

V. CONCLUSION

For the reasons stated hereinabove, the MPUC respectfully requests that the Commission accept its Motion for Leave to Intervene Out of Time. The MPUC also respectfully asks the Commission to direct ISO-NE to qualify the Stetson Wind Farm for the first FCM, or, in the alternative, require a reexamination of Planning Procedure 10 as part of the Queue stakeholder process so that renewable generators that provide benefits to New England in helping to meet renewable and Regional Greenhouse Gas Initiative requirements can participate in the FCM. In addition, the Commission should direct ISO-

NE to work with the MPUC should the MPUC request a study of a second Maine zone.

Dated: December 18, 2007

Respectfully submitted,

/s/ Lisa S. Gast

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 18th day of December, 2007.

/s/ Harry A. Dupre
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